

**WEINER
BRODSKY
SIDMAN
KIDER PC**

227359



June 28, 2010

BY HAND

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20423-0001

**ENTERED
Office of Proceedings**

JUN 28 2010

**Part of
Public Record**

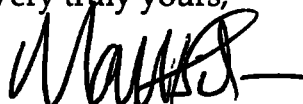
Re: Finance Docket No. 35348, CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc. – Joint Use Agreement

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of the Motion to Compel Responses to the First Set of Discovery Requests Directed to Delaware and Hudson Railway Company, Inc. and to CSX Transportation, Inc.

Please acknowledge receipt of this letter by date-stamping the acknowledgement copy and returning it to our messenger.

Very truly yours,


Mark H. Sidman

Enclosures

221359

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35348

CSX TRANSPORTATION, INC. AND DELAWARE AND HUDSON
RAILWAY COMPANY, INC. – JOINT USE AGREEMENT

NEW YORK & ATLANTIC RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO THE FIRST SET OF DISCOVERY
REQUESTS DIRECTED TO DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

EXPEDITED CONSIDERATION REQUESTED

ENTERED
Office of Proceedings

JUN 28 2010

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Public Record

Mark H. Sidman
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
(202) 628-2000

Attorneys for
New York & Atlantic Railway Company

Dated: June 28, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35348

**CSX TRANSPORTATION, INC. AND DELAWARE AND HUDSON
RAILWAY COMPANY, INC. – JOINT USE AGREEMENT**

**NEW YORK & ATLANTIC RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO THE FIRST SET OF DISCOVERY
REQUESTS DIRECTED TO DELAWARE AND HUDSON RAILWAY
COMPANY, INC.**

Pursuant to 49 C.F.R. §1114.31(a), New York & Atlantic Railway Company ("NYA") hereby moves the Surface Transportation Board ("Board") to compel Delaware and Hudson Railway Company, Inc. ("D&H") to make full and complete responses to certain of the NYA discovery requests that were served on counsel to D&H on June 11, 2010 (the "Requests," a copy of which are appended hereto as Attachment A).

The Board's discovery rules provide that, "[p]arties may obtain discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding." 49 C.F.R.

§1114.21. Despite the Board's policy of generally permitting discovery of all relevant information, D&H, in its Responses and Objections of D&H to NYA's

First Set of Interrogatories and Requests for Production (the "D&H Responses," the relevant pages of which, without attachments, are appended hereto as Attachment B), served June 25, 2010, has refused to provide responses to certain Requests that are plainly relevant to the issues presented in this proceeding. NYA urges that the Board (i) compel D&H to respond fully to the Requests discussed below, and (ii) permit NYA to supplement the comments it intends to file in this proceeding, due on July 2, 2010¹, within seven (7) days after D&H provides full responses to the Requests.

I. The Requests for Which NYA Seeks Full Responses.

The transaction proposed in the Application would involve, among other things (i) D&H's cessation of train service over the rail line from Albany, NY to Fresh Pond, NY, where D&H interchanges with NYA, and (ii) the implementation of a "joint use" arrangement - - essentially a haulage agreement - whereby cars in D&H's account would be handled by CSXT from Albany to Fresh Pond for interchange with NYA. The Applicants assert that the transaction will make D&H more competitive in the New York metropolitan area. As discussed below, each of the Requests sought information and/or documents that are relevant to this core claim of the Applicants.

¹ The Board's decision in this proceeding, dated May 27, 2010, established July 2, 2010, as the due date for comments, protests and requests for conditions.

In Interrogatory No. 3, NYA requested the following:

Identify and provide the amount of all fees and charges currently paid by D&H to third parties in connection with handling D&H trains over the . . . [Albany to Fresh Pond line] for interchange with NYA at Fresh Pond Junction including (i) trackage rights fees paid to CSXT, and (ii) trackage rights fees or other charges paid to National Railroad Passenger Corporation, Metro North Commuter Railroad, or the New York State Department of Transportation.

Requests at 11.

The Application and the Joint Use Agreement appended thereto as Exhibit 2 make clear that, in connection with its operations over the Albany to Fresh Pond line, D&H must pay various fees to third parties. In assessing the Applicants' claim that D&H will be a more effective competitor under the proposed Joint Use Agreement, it is essential to understand the amount of third party fees that currently apply to D&H's operations and that may apply to the proposed joint use arrangement. Interrogatory No. 1 simply sought to quantify those third party payments.

In addition, Request for Production No. 1 asked for copies of "all documents identified in, related to, consulted, reviewed, or relied upon in making, or otherwise supporting, any of D&H's responses to the Interrogatories" Requests at 13. This request, insofar as it relates to Interrogatory No. 3,

asks for production of the agreements that contain the third party fees that D&H currently pays and may pay under the Joint Use Agreement.

D&H objected to Request for Production No. 1 “on the grounds that the information it seeks is neither relevant to any issues in this proceeding nor reasonably calculated to lead to the production of admissible evidence.” D&H Responses at 7. D&H also claimed it would need to perform a special study to determine the requested fees and charges for 2006, 2008 and 2009. In the D&H Responses, D&H did produce two pages of cryptic information related to third party payments in 2007, but it is impossible to determine from the produced material the basis for computing the third party fees for traffic interchanged to NYA, or whether all or some of those fees would continue to be paid by D&H or CSXT under the joint use arrangement proposed in the Application filed by CSXT and D&H in this proceeding.

The third party fees have a direct bearing on the viability of D&H’s current and proposed operations, and are expressly addressed in Section 9.03 of the Joint Use Agreement. D&H is hard pressed to object on the grounds of relevance to provide the current amount of the third party fees. It would hardly take a “special study” to determine those amounts. In any event, there is no basis whatsoever for D&H to refuse to produce its agreements with Amtrak,

Metro North and New York DOT that provide for payment of fees on traffic moving over the Albany-Fresh Pond line for interchange with NYA.

In Interrogatories Nos. 4 and 5, Requests at 12, NYA requested traffic data related to a 2005 transaction in New York State in which D&H substituted a haulage rights arrangement for its trackage rights operating over the so-called Southern Tier Line. *Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights – In Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie and Genesee Counties, NY*, Fin. Doc. No. 34561, decided January 19, 2005 (the “Southern Tier”). In *Southern Tier*, the Board looked at a series of transactions that included discontinuance of D&H’s trackage rights over Norfolk Southern Railway’s (“NS”) Southern Tier Line, and the provision by NS to D&H of haulage service over that same line. Although the parties took a far more traditional regulatory approach in *Southern Tier* (i.e., D&H sought discontinuance of its trackage rights and NS did not seek authority for the unregulated haulage operation), the net effect of that transaction is substantially identical to the transaction described in the Application: The cessation of train operations conducted pursuant to trackage rights and the replacement of those operations with a haulage arrangement (which, in this proceeding, the Applicants have nicknamed a “joint use arrangement”).

Given the similarity of the trackage rights for haulage rights swap in the transactions described in the *Southern Tier* and in the Application, it would be instructive to determine if, in fact, the haulage rights obtained by D&H in the *Southern Tier* made that carrier more competitive. If, however, little or no traffic moved by the haulage arrangement on the Southern Tier Line, NYA's fears about the transaction proposed in the Application may be well-grounded.

There is little or no burden on D&H to provide traffic information for the Southern Tier Line. That information is kept in the ordinary course and can be extracted from D&H's data base. Contrary to D&H's claim, production of that basic data requires no "special study."

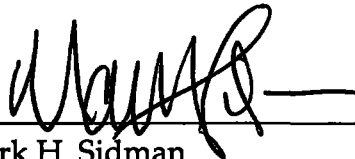
Finally, in Interrogatory No. 7, NYA requested that D&H "[i]dentify all haulage arrangements currently in effect between D&H and another railroad and the fee paid/received by D&H (on a per car or similar basis) under each such arrangement." Requests at 13. D&H objected to this request on the grounds of relevance and its claim that information sought is "highly proprietary and commercially sensitive." D&H Responses at 10. Finally, D&H objected on the grounds that "several" of D&H's haulage agreements – but apparently not all – contain confidentiality provisions. *Id.*

NYA submits that the haulage fees in D&H's other haulage arrangements are highly relevant to the issues of whether the fees in the Joint Use Agreement

are customary and reasonable, and are likely to make D&H more competitive. The disclosure of those fees will be subject to the Protective Order that NYA's counsel has executed and provided to D&H. NYA urges the Board to compel D&H to respond to Interrogatory No. 7 as to all of its haulage agreements (other than those that have confidentiality provisions that would prohibit disclosure, under a protective order, in a regulatory proceeding).

For the foregoing reasons, NYA urges that the Board issue an order compelling D&H to respond fully to Interrogatories Nos. 3, 4, 5 and 7 and Request for Production No. 1 (as it relates to Interrogatories Nos. 3 and 7). NYA requests that it be permitted to supplement any comments it files in this proceeding within seven (7) days after D&H provides additional responses. In view of the fact that NYA's comments in this proceeding are due on July 2, 2010, and Applicants' responses to comments are due on July 23, 2010, NYA respectfully requests that the Board consider this motion on an expedited basis.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark H. Sidman', is written over a horizontal line.

Mark H. Sidman
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
(202) 628-2000

Attorneys for
New York & Atlantic Railway Company

Dated: June 28, 2010

F:\98059\002\D&H\Motion to Compel 6-25-10.docx

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 2010 a true and correct copy of New York & Atlantic Railway Company's Motion to Compel Responses to the First Set of Discovery Requests is being served by email and first-class mail, postage prepaid, on the following:

Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, Maryland 21204

I further hereby certify that on this 28th day of June 2010 a true and correct copy of New York & Atlantic Railway Company's Motion to Compel Responses to the First Set of Interrogatories Discovery Requests is being served by first-class mail, postage prepaid, on the following:

Attorney General of the United States
c/o Assistant Attorney General
Antitrust Division, Room 3109
Department of Justice
Washington, DC 20530

Secretary of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Edward D. Greenberg
GKG Law, P.C.
1054 Thirty-First Street, NW
Suite 200
Washington, DC 20007

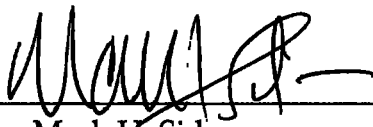
Gerard I. Drumm
Sills Road Materials LLC
56 Consegogue Road
East Setauket, NY 11733

Charles A. Spitulnik
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036

Robert A. Rybak
NYSDOT
Division of Legal Affairs
50 Wolf Road
Albany, New York 12232

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Washington, DC 20036-5444

John Davidson
Palette Stone Corp./Jointa
Galusha LLC
P.O. Box 4550
Saratoga Springs, NY 12866



Mark H. Sidman

FINANCE DOCKET NO. 35348
NYA-4

Attachment A

**NYA's First Set of Interrogatories and
Requests for Product to D&H**

**WEINER
BRODSKY
SIDMAN
KIDER PC**

June 11, 2010

BY EMAIL AND FIRST CLASS MAIL

Terrence M. Hynes, Esq.
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Re: Finance Docket No. 35348, CSX Transportation, Inc. and Delaware and
Hudson Railway Company, Inc. – Joint Use Agreement

Dear Terry:

Enclosed is New York & Atlantic Railway Company's ("NYA") First Set of
Interrogatories and Requests for Production to Delaware and Hudson Railway Company.

Very truly yours,



Mark H. Sidman

Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35348

**CSX TRANSPORTATION, INC. AND DELAWARE AND HUDSON
RAILWAY COMPANY, INC. – JOINT USE AGREEMENT**

**NEW YORK & ATLANTIC RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO
DELAWARE AND HUDSON RAILWAY COMPANY**

Mark H. Sidman
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
(202) 628-2000

Attorneys for
New York & Atlantic Railway Company

Dated: June 11, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35348

**CSX TRANSPORTATION, INC. AND DELAWARE AND HUDSON
RAILWAY COMPANY, INC. – JOINT USE AGREEMENT**

**NEW YORK & ATLANTIC RAILWAY COMPANY'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO
DELAWARE AND HUDSON RAILWAY COMPANY**

Pursuant to 49 C.F.R. § 1114.26 and § 1114.30, and the decision of the Surface Transportation Board in this proceeding, served May 27, 2010, New York & Atlantic Railway Company ("NYA") hereby submits its First Set of Interrogatories and Requests for Production of Documents (the "Discovery Requests") to Delaware and Hudson Railway Company, Inc. ("D&H"). D&H's responses to the Discovery Requests should be delivered to Mark H. Sidman at the offices of Weiner Brodsky Sidman Kider PC, 1300 19th Street, N.W., Fifth Floor, Washington, D.C. 20036, as soon as possible but no later than June 25, 2010. D&H is requested to contact the undersigned promptly to discuss any objections or questions regarding these Discovery Requests with a view to resolving any dispute or issues of interpretation informally and expeditiously.

I. DEFINITIONS

1. "All" or "any" means each and every.
2. "Applicants" shall refer to CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc.
3. "Application" means the Application (CSXT-2/D&H-2) filed by Applicants in STB Finance Docket No. 35348 on April 27, 2010.
4. "Board" or "STB" means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission, if applicable.
5. "Consultant" means any entity, individual, or group of individuals, including but not limited to any advisors, investment bankers, financial analysts, industry analysts, and/or industry experts, retained or otherwise consulted with by one or more of the Applicants for purposes of analyzing the proposed Transaction or the effects of the proposed Transaction.
6. "CSXT" shall to refer to CSX Transportation, Inc. its predecessors, parents, subsidiaries, and affiliated entities, and the controlling shareholders, officers, directors, employees, agents, financial advisors, consultants, attorneys, representatives, predecessors, successors and assigns of each such entity and any person acting on behalf of the foregoing.
7. "D&H" shall refer to Delaware and Hudson Railway Company, its predecessors, parents, subsidiaries, and affiliated entities, and the controlling

shareholders, officers, directors, employees, agents, financial advisors, consultants, attorneys, representatives, predecessors, successors and assigns of each such entity and any person acting on behalf of the foregoing. All requests for D&H documents encompass requests for documents in the possession, custody, or control of each of these entities.

8. "Describe" when used in relation to a discussion, meeting, or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

9. "Document" means any writing or other compilation of information (including electronically stored information and its metadata), whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, and whether or not claimed to be privileged or confidential, including but not limited to: intracompany communications; electronic databases; electronic mail ("e-mail"); correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; computer

models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further, the term "document" includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect

~~from original version, including notes.~~

10. "Haulage Rights" refers to these provisions of the Joint Use Agreement appended as Exhibit 2 to the Application that provide for CSXT to handle rail cars in D&H's account over the Trackage Rights Route.

11. "Identify"

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;

c. when used in relation to a document means to:

- (1) state the type of document (*e.g.*, letter, e-mail, memorandum, report, chart);
- (2) identify the author, each addressee, and each recipient; and
- (3) state the number of pages, title, and date of the document;

d. when used in relation to an oral communication or statement

means to:

- (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
- (2) state the date and place of the communication or statement;
- (3) describe in detail the contents of the communication or statement; and
- (4) identify all documents that refer to, relate to or evidence the communication or statement;

e. when used in any other context means to describe or explain in detail.

12. "Including" means including without limitation.
13. "New York Metro Area" when used in relation to rail traffic shall refer to (i) rail traffic moving to or from stations in the Boroughs of Queens, Brooklyn and The Bronx, NY, and in Nassau and Suffolk Counties, NY.
14. "NYA" shall refer to New York & Atlantic Railway Company.
15. "Oak Point Switching Agreement" shall refer to the switching agreement between D&H and CSXT whereby CSXT handles rail cars in D&H's ~~account to and from customers in the Boroughs of Queens and The Bronx, NY,~~ and for interchange with NYA at Fresh Pond Junction, NY.
16. "Person" means an individual, company, partnership, or other entity of any kind.
17. "Produce" means to make available for copying and viewing.
18. "Relate to" or "relating to" means concerning, referring to, relating to, describing, evidencing or constituting.
19. "Shipper" means a user of rail services, including a consignor, a consignee, or a receiver.
20. "Southern Tier Line" refers to the rail lines of Norfolk Southern Railway Company between Binghamton and Buffalo, NY and connecting tracks in Buffalo, as described in STB Finance Docket No. AB-156 (Sub-No. 25X).

21. "Studies, analyses and reports" include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

22. "Trackage Rights" shall refer to D&H's trackage rights over the CSXT rail line from Schenectady, NY to Oak Park, NY and from Oak Park Yard to Fresh Pond Junction, NY.

23. "Trackage Rights Route" shall refer to the rail line of CSXT from ~~Schenectady, NY to Oak Park Yard, NY and from Oak Park Yard to Fresh Pond~~ Junction, NY (including any portions of such line over lines of Metro North Commuter Railroad or other lines of third parties).

24. "Transaction" means the series of transactions described in, and encompassed by, the Application (CSXT-2/D&H-2) filed by the Applicants in this proceeding on April 27, 2010.

II. INSTRUCTIONS

1. Applicants should contact the undersigned counsel immediately to discuss any objections or questions with a view to resolving any dispute or issues or interpretation informally and expeditiously. Objections, if any, should be made as soon as possible, and not later than June 25, 2010. Serial production of responsive documents during that fourteen-day period is encouraged and requested.

2. Unless otherwise specified, these Discovery Requests cover the period beginning January 1, 2006, and ending with the date of the response.

3. If the Applicants have information that would permit a partial answer to any interrogatory, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that discovery request, and if the burden of conducting such special study would be greater for Applicants than for NYA:

a. ~~state that fact;~~

b. provide the partial answer that may be made with information available to Applicants;

c. Identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and

d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer.

4. If any information is withheld on the ground that is privileged or otherwise not discoverable, D&H shall provide a statement signed by an attorney representing D&H setting forth as to each such document the nature of

the privileged information and the justification for the claim of privilege in sufficient detail to permit an assessment of whether the assertion of privilege is valid.

5. Pursuant to 49 C.F.R. § 1114.29, Applicants are under a duty to seasonably supplement its responses with respect to any discovery request, including if Applicants know or later learn that its response to any discovery request is incorrect.

6. As to each interrogatory, identify the person(s) who provided the information used in Applicants' response to the inquiry.

7. The present tense shall be construed to include the past tense and the past tense shall be construed to include the present tense as necessary to bring within the scope of these Discovery Requests any information that might otherwise be construed to be outside of their scope.

8. The singular shall be construed to include the plural and the plural shall be construed to include the singular as necessary to bring within the scope of these Discovery Requests any information that might otherwise be construed to be outside their scope.

9. "And" or "or" shall be construed disjunctively or conjunctively as necessary to make these Discovery Requests inclusive rather than exclusive.

10. Whenever a Discovery Request calls for the identification or the identity of a person, the identification should include his or her full name and present or least known business address and current telephone number. If a business address is not known, provide a home address. The identification also should include the person's most recent known occupation (including title and job description) and most recent known employer. Whenever the person identified is a business or a government entity or firm, state the full name of the entity or firm and the address of its principle place of business.

III. INTERROGATORIES

Interrogatory No. 1.

For each of the years 2007, 2008 and 2009, identify:

- (a) The number of carloads of traffic, by commodity, handled by D&H over all or any portion of the Trackage Rights Route;
- (b) The number of carloads of traffic, by commodity, handled by D&H over all or a portion of the Trackage Rights Route and interchanged to (i) NYA, and (ii) railroads other than NYA; and
- (c) The number of carloads of traffic, by commodity, handled by D&H over all or any portion of the Trackage Rights Route directly to or from a Shipper (via the Oak Point Switching Agreement, reciprocal switch or otherwise) in the New York Metro Area.

Interrogatory No. 2.

For each of the years 2007, 2008 and 2009, identify:

- (a) For D&H and its affiliates in the United States, (i) the system average revenue per carload for stone and aggregate traffic moving under STCC 14, and (ii) the system average revenue per car-mile for stone and aggregate traffic moving under STCC 14.
- (b) For D&H and its affiliates in the United States, the average revenue per carload and average revenue per car mile for stone, and aggregate traffic moving under STCC that was interchanged by D&H to NYA.

Interrogatory No. 3.

Identify and provide the amount of all fees and charges currently paid by D&H to third parties in connection with handling D&H trains over the Trackage Rights Route for interchange with NYA at Fresh Pond Junction including (i) trackage rights fees paid to CSXT, and (ii) trackage rights fees or other charges paid to National Railroad Passenger Corporation, Metro North Commuter Railroad, or the New York State Department of Transportation.

Interrogatory No. 4.

For each of the years 2002, 2003 and 2004, identify the number of carloads of traffic, by commodity, handled by D&H via trackage rights over all or any portion of the Southern Tier Line.

Interrogatory No. 5.

For each of the years 2006 through 2009 inclusive, identify the number of carloads of D&H traffic, by commodity, handled by NS for D&H over all or any portion of the Southern Tier Line, pursuant to the haulage arrangement between NS and D&H described in the STB's decision in Docket No. AB-156 (Sub-No. 25X), et al. (served January 19, 2005).

Interrogatory No. 6.

Describe (i) the methodology used by D&H to establish the haulage fee payable by D&H to CSXT pursuant to Section 9 of the Joint Use Agreement, for traffic moving over the Trackage Rights Route, and (ii) any analysis performed by D&H to compare the haulage fee payable by D&H to CSXT pursuant to Section 9 of the Joint Use Agreement for traffic moving over the Trackage Rights Route, to the trackage rights fee and other fees payable by D&H under the Trackage Rights Agreement for D&H train operations over the Trackage Rights Route.

Interrogatory No. 7.

Identify all haulage arrangements currently in effect between D&H and another railroad, and the fee paid/received by D&H (on a per car or similar basis) under each such arrangement.

IV. REQUESTS FOR PRODUCTION

Request for Production No. 1.

Produce all documents identified in, related to, consulted, reviewed, or relied upon in making, or otherwise supporting, any of D&H's responses to the Interrogatories set forth above.

Request for Production No. 2.

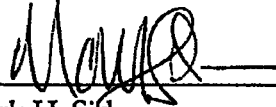
Produce all traffic studies, marketing studies or analyses, financial projections and reports (including workpapers) prepared by or for D&H employees and/or its Consultants in connection with the proposed Transaction and related to (i) traffic handled by D&H to the New York Metro Area, or (ii) potential traffic for D&H to handle to the New York Metro Area.

Request for Production No. 3.

Produce all cost studies, cost analyses, financial projection or reports prepared by or for D&H employees and/or its consultants related to (i) the cost to D&H of providing service to the NY Metro Area via the Trackage Rights, and/or

(ii) the cost to D&H of providing service to the NY Metro Area via the Haulage Rights.

Respectfully submitted,



Mark H. Sidman
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
(202) 628-2000

Attorneys for
New York & Atlantic Railway Company

Dated: June 11, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June 2010 a true and correct copy of New York & Atlantic Railway Company's First Set of Interrogatories and Requests for Production to Delaware and Hudson Railway Company is being served by email and first-class mail, postage prepaid, on the following:

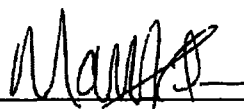
Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, Maryland 21204

I further hereby certify that on this 11th day of June 2010 a true and correct copy of New York & Atlantic Railway Company's First Set of Interrogatories and Requests for Production to Delaware and Hudson Railway Company is being served by first-class mail, postage prepaid, on the following:

Secretary of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Attorney General of the United States
c/o Assistant Attorney General
Antitrust Division, Room 3109
Department of Justice
Washington, DC 20530

A handwritten signature in black ink, appearing to read 'Mark H. Sidman', is written over a horizontal line.

Mark H. Sidman

Attachment B

**D&H's Responses and Objections to
NYA's First Set of Interrogatories and
Requests for Product to D&H
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35348

**CSX TRANSPORTATION, INC. & DELAWARE AND HUDSON
RAILWAY COMPANY, INC. - JOINT USE AGREEMENT**

**APPLICANT DELAWARE AND HUDSON RAILWAY COMPANY, INC.'S
RESPONSES AND OBJECTIONS TO NEW YORK & ATLANTIC
RAILWAY COMPANY'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Applicant Delaware and Hudson Railway Company, Inc. ("D&H"), through the undersigned counsel, responds as follows to New York & Atlantic Railway Company's ("NYA's") First Set of Interrogatories and Requests for Production to D&H.

GENERAL OBJECTIONS

D&H's General Objections, as set forth herein, are to be considered objections to each of the specific Interrogatories and Requests that follow. D&H's objections shall not waive or prejudice any objections that it may later assert.

1. D&H objects to any and all definitions and/or instructions to the extent that those definitions and instructions either expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. Further, D&H objects to these Interrogatories and Requests to the extent that they seek to impose obligations on D&H greater than, or inconsistent with, those imposed under 49 C.F.R. Part 1114, Subpart B.

2. D&H objects to each and every Interrogatory and Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work-product doctrine,

which the answer could be derived would impose an undue burden on D&H that far outweighs any relevance or probative value the information sought may have in this proceeding.

INTERROGATORY NO. 3.

Identify and provide the amount of all fees and charges currently paid by D&H to third parties in connection with handling D&H trains over the Trackage Rights Route for interchange with NYA at Fresh Pond Junction including (i) trackage rights fees paid to CSXT, and (ii) trackage rights fees or other charges paid to National Railroad Passenger Corporation, Metro North Commuter Railroad, or the New York State Department of Transportation.

RESPONSE:

D&H objects to this Interrogatory on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Interrogatory on the grounds that it would require D&H to perform a special study to determine the amount of fees and charges paid by D&H to third parties in connection with the movement of D&H trains over the Trackage Rights Route during the years 2006, 2008 and 2009. Subject to and without waiving these objections or its General Objections, D&H states that the fees and charges paid by D&H to third parties in connection with the movement of D&H trains over the Trackage Rights Route during 2007 (which data D&H compiled in connection with its consideration of the proposed joint use agreement) are set forth in documents being produced in response to NYA Request for Production No. 3.

INTERROGATORY NO. 4.

For each of the years 2002, 2003 and 2004, identify the number of carloads of traffic, by commodity, handled by D&H via trackage rights over all or any portion of the Southern Tier Line.

RESPONSE:

D&H objects to this Interrogatory on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Interrogatory on the grounds that it would require D&H to perform a special study to determine the number of carloads of traffic, by commodity, handled by D&H via its trackage rights over the Southern Tier Line during the subject years. D&H also objects to this Interrogatory on the grounds that it would be unduly burdensome for D&H to search for traffic data dating back eight years (to 2002) and relating to rail lines over which D&H no longer conducts train operations (such data may not, in any event, be available). Answering this Interrogatory or producing business records (if available) from which the answer could be derived would impose an undue burden on D&H that far outweighs any relevance or probative value the information sought may have in this proceeding.

INTERROGATORY NO. 5.

For each of the years 2006 through 2009 inclusive, identify the number of carloads of D&H traffic, by commodity, handled by NS for D&H over all or any portion of the Southern Tier Line, pursuant to the haulage arrangement between NS and D&H described in the STB's decision in Docket No. AB-156 (Sub-No. 25X), et al. (served January 19, 2005).

RESPONSE:

D&H objects to this Interrogatory on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Interrogatory on the grounds that it would require D&H to perform a special study to determine the number of carloads of traffic, by commodity, that moved via D&H's haulage arrangement with NS over the Southern Tier Line during the subject years. Answering this Interrogatory or producing business records from which

the answer could be derived would impose an undue burden on D&H that far outweighs any relevance or probative value the information sought may have in this proceeding.

INTERROGATORY NO. 6.

Describe (i) the methodology used by D&H to establish the haulage fee payable by D&H to CSXT pursuant to Section 9 of the Joint Use Agreement, for traffic moving over the Trackage Rights Route, and (ii) any analysis performed by D&H to compare the haulage fee payable by D&H to CSXT pursuant to Section 9 of the Joint Use Agreement for traffic moving over the Trackage Rights Route, to the trackage rights fee and other fees payable by D&H under the Trackage Rights Agreement for D&H train operations over the Trackage Rights Route.

RESPONSE:

D&H objects to this Interrogatory on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Interrogatory on the grounds that the term “haulage fee” is vague (insofar as Section 9 of the Joint Use Agreement does not make reference to any “haulage fee” payable by D&H to CSXT). D&H will interpret the term “haulage fee” as referring to the “D&H Service Fee” referenced in Section 9.03 of the Joint Use Agreement. Subject to and without waiving these objections or its General Objections, D&H responds as follows:

(i) The “methodology” used by D&H to establish the D&H Service Fee was negotiation with CSXT.

(ii) D&H’s analysis comparing the D&H Service Fee payable by D&H pursuant to Section 9 of the Joint Use Agreement with the fees and expenses incurred by D&H in connection with its existing trackage rights operations over the Trackage Rights Route (based upon 2007 traffic), which D&H prepared in connection with its consideration of the proposed joint use

agreement, is set forth in the documents being produced in response to NYA Request for Production No. 1.

INTERROGATORY NO. 7.

Identify all haulage arrangements currently in effect between D&H and another railroad, and the fee paid/received by D&H (on a per car or similar basis) under each such arrangement.

RESPONSE:

D&H objects to this Interrogatory on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Interrogatory on the grounds that the information it seeks is highly proprietary and commercially sensitive, and the disclosure of which could generate anticompetitive effects and commercial harm to D&H and to other parties to those agreements that far outweigh any conceivable relevance or probative value the information sought may have in this proceeding. D&H also objects to this Interrogatory on the grounds that several of the haulage agreements to which D&H is a party contain confidentiality provisions that expressly prohibit disclosure of those agreements (or their terms) to third parties without the prior written consent of the other party to such agreements.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1.

Produce all documents identified in, related to, consulted, reviewed, or relied upon in making, or otherwise supporting, any of D&H's responses to the Interrogatories set forth above.

RESPONSE:

D&H objects to this Request on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Request to the extent that it calls for the

disclosure of documents protected by the attorney-client privilege and/or the work product doctrine. D&H also objects to this Request as overbroad and unduly burdensome to the extent it seeks production of “all documents . . . related to” or “otherwise supporting” D&H’s responses to NYA’s Interrogatories. Subject to and without waiving these specific objections or its General Objections, D&H will produce those non-privileged, responsive documents that are identified in, or were consulted, reviewed or relied upon by D&H in preparing, its responses to NYA’s Interrogatories.

REQUEST FOR PRODUCTION NO. 2.

Produce all traffic studies, marketing studies or analyses, financial projections and reports (including workpapers) prepared by or for D&H employees and/or its Consultants in connection with the proposed Transaction and related to (i) traffic handled by D&H to the New York Metro Area, or (ii) potential traffic for D&H to handle to the New York Metro Area.

RESPONSE:

D&H objects to this Request on the grounds that the information it seeks is neither relevant to any issue in this proceeding nor reasonably calculated to lead to the production of admissible evidence. D&H further objects to this Request as overbroad and unduly burdensome. Subject to and without waiving these specific objections or its General Objections, D&H will produce non-privileged, responsive documents.

REQUEST FOR PRODUCTION NO. 3.

Produce all cost studies, cost analyses, financial projection or reports prepared by or for D&H employees and/or its consultants related to (i) the cost to D&H of providing service to the NY Metro Area via the Trackage Rights, and/or (ii) the cost to D&H of providing service to the NY Metro Area via the Haulage Rights.